

**2002**  
**Professional Services Consultant Agreement**  
**Cost Plus a Fixed Fee**  
**Agreement Number**

Firm Name and Address:		
Federal Employer Identification Number:		Unified Business Identifier (UBI) Number:
Completion Date:		Execution Date:
Federal Aid Number:	1099 Form Required: <input type="checkbox"/> Yes <input type="checkbox"/> No	Fixed Fee:
Project title and description of work:		Overhead Progress Payment Rate:  Overhead Method: <input type="checkbox"/> Fixed Rate <input type="checkbox"/> Actual Cost
DBE Participation (If below \$250,000, participation is race-neutral) <input type="checkbox"/> Yes <input type="checkbox"/> No  MBE Participation (Voluntary) <input type="checkbox"/> Yes <input type="checkbox"/> No  WBE Participation (Voluntary) <input type="checkbox"/> Yes <input type="checkbox"/> No		Total Amount Authorized  Management Reserve Fund  Maximum Amount Payable <span style="float: right;">\$0.00</span>

## **Index of Exhibits**

Exhibit "A" - Scope of Work  
Exhibit "B" - D/M/WBE Participation  
Exhibit "C" - Electronic Exchange of Engineering and Other Data  
Exhibit "D" - Prime Consultant Cost Computations  
Exhibit "E" - Sub-consultant Cost Computations  
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Exhibit "G" - Certification Documents

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on the cover page of this AGREEMENT, between the State of Washington, acting through the Washington State Department of Transportation and the Secretary of Transportation, hereinafter called the "STATE," and the above organization hereinafter called the "CONSULTANT."

WITNESSETH THAT:

WHEREAS, the STATE desires to accomplish the above referenced PROJECT; and

WHEREAS, the STATE does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish Consulting Services to the STATE.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

### **I**

#### **General Description of Work**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

### **II**

#### **Scope of Work**

The Scope of Work and projected level of effort required for this project is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

### **III**

#### **General Requirements**

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE and/or such Federal, Community, City or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days notice shall be agreed to between the STATE and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, which will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or voluntary participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the STATE'S "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of the AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of the AGREEMENT.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the STATE shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others, acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

## **IV**

### **Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

## **V**

### **Payment Provisions**

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work." The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

- A. Actual Costs: Payment for all consulting services for this project shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, direct non-salary costs, and fixed fee.
1. Direct Salary Costs: The Direct Salary Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the STATE.
  2. Overhead Costs: Overhead Costs are those costs other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT under "Overhead Progress Payment Rate." Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The two options are explained as follows:
    - a. Fixed Rate: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CONSULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.
    - b. Actual Cost: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CONSULTANT the actual overhead costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANTS cost estimate and the overhead computation is shown in Exhibit "D" attached hereto and by this reference made part of this AGREEMENT. When an Actual Cost method is used, the CONSULTANT (prime and all sub-consultants) will submit to the STATE within six (6) months after the end of each firm's fiscal year, an overhead schedule in the format required by the STATE (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate. This information will be sent to:

Washington State Department of Transportation  
Consultant Service's Office  
P.O. Box 47323  
Olympia, WA 98504-7323

Failure to supply this information by either the prime CONSULTANT or any of their sub-consultants shall cause the STATE to withhold payment of the billed overhead costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The STATE and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Travel Rules and Procedures Manual M 13-82 and revisions thereto. The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT'S profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional Fixed Fee, which could be authorized from the Management Reserve Fund. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event a supplemental AGREEMENT is entered into for additional work by the CONSULTANT, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
5. Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental AGREEMENT. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."
6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the STATE to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment

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for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.

- B. Monthly Progress Payments: The CONSULTANT may submit billings to the STATE for reimbursement of Actual Costs plus the calculated overhead and fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the STATE and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct Salary, Direct Non-Salary, and allowable Overhead Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed salary costs for CONSULTANT employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

- D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the STATE External Audit Office and/or at the request of the STATE'S Project Manager.

## **VI**

### **Sub-Contracting**

The STATE permits sub-contracts for those items of work as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "E."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this Agreement.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE'S Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for sub-contracting shall create, between the STATE and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum of 70% of the total amount of their sub-contracted agreement.

## **VII Employment**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT'S employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

## **VIII**

### **Nondiscrimination**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)
- Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)
- Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)
- Civil Rights Restoration Act of 1987  
(Public Law 100-259)
- American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)
- 49 CFR Part 21
- 23 CFR Part 200
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

## **IX**

### **Termination of Agreement**

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the actual costs plus the same percentage of the Fixed Fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.



If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination, the cost to the STATE of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT'S failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. This subsection shall not be a bar to renegotiating of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X**

### **Changes of Work**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## **XI**

### **Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided, however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to *de novo judicial review*. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation "Consultant Service's Procedures Manual" M27-50 and revisions thereto.

## **XII**

### **Venue, Applicable Law, and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

## **XIII**

### **Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

The CONSULTANT'S relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the State Ethics law, RCW 42.52, which regulates gifts to STATE officers and employees. Under that statute, any STATE officer or employee who has or will participate with the CONSULTANT regarding any aspect of this Project is prohibited from seeking or accepting any gift, gratuity, favor, or anything of economic value from the CONSULTANT. Accordingly, neither the CONSULTANT nor any agent or representative shall offer anything of economic value as a gift, gratuity, or favor directly or indirectly to any such officer or employee.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable supplemental agreement, the CONSULTANT shall provide On-Call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction

techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

#### Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Washington State Department of Transportation  
Consultant Service's Office  
P.O. Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT'S professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

## **XIV Extra Work**

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any “request for equitable adjustment”, hereafter referred to as “CLAIM”, under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

## **XV**

### **Endorsement of Plans**

The CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

## **XVI**

### **Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

## **XVII**

### **Certification of the Consultant and the State**

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the STATE, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENTS over \$100,000 and Exhibit “G-4” is required only in AGREEMENTS over \$500,000.

## **XVIII**

### **Complete Agreement**

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes,

amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

## **XIX**

### **Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on the cover page of this AGREEMENT.

---

Signature

Date

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

---

Signature

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

## **Exhibit C**

### **Electronic Exchange of Engineering and Other Data**

#### **I. Surveying, Roadway Design & Plans Preparation Section**

- A. Survey Data: Survey data shall be collected using WSDOT methodologies and survey codes as defined in the Highway Survey Manual (M22-97) and Standard Survey Codes and all applicable professional surveying practices.

All primary survey control shall be established using Washington State Plane (NAD 83/91) and North American Vertical Datum of 1988 (NAVD 88) in English units. Primary control shall be transformed to project datum by applying the appropriate combined correction factor (scale factor, elevation factor). All secondary control and topography work shall be done on the Project Datum.

- B. Roadway Design Files: The WSDOT supported version of CAiCE, current at the date of execution of the consultant agreement, shall be used for all computer aided roadway design calculations. If WSDOT upgrades to a newer version after the date of execution, the consultant, at their discretion, may use the more current WSDOT supported version. WSDOT Custom Fragment Files shall be used where applicable. WSDOT Standard Feature Codes shall be used for all design work. All CAiCE files shall be prepared using Project Datum as defined in Section "A" above.
- C. Computer Aided Drafting Files: Computer Aided Drafting (CAD), files shall be prepared using WSDOT methodologies and standards as defined in Plans Preparation Manual (M22-31). CAD files shall be prepared using a Project Datum as defined in Section "A" above.
- D. Right to Review Product by the WSDOT: The state reserves the right to schedule visits at the consultant's location to review electronic files for compliance with WSDOT methodologies and standards. The consultant may request visits by WSDOT to review electronic files.
- E. Electronic Deliverables to WSDOT: Upon WSDOT approval and acceptance of the final signed and stamped plans, the consultant shall provide to WSDOT the final electronic versions of all survey data files, CAD files and roadway design files and associated resource files on compact disc (CD). The CD shall include an index file that lists all the files on the CD and provides a brief description of the contents and purpose of each file. All project design data shall be provided as described in the following three paragraphs.

Survey data shall include all the RAW data, unedited and edited ASCII data files. All survey points shall be in Washington state plane coordinate values in an electronic format that can be imported directly into CAiCE with no loss of coordinate accuracy, point and string identifiers, feature codes, and point and string types (2D, 3D, obscure, etc.). The combined correction factor used in conversions between state plane coordinates and project coordinates shall be provided if a conversion factor has been used.

The computer aided roadway design engineering data, shall be provided as a CAiCE project archive file that includes all of the following items; coordinate geometry data with point and feature code identification horizontal and vertical alignments, existing and proposed surfaces, superelevation data, cross sections, and roadway templates. The CAiCE project archive file shall also include the CAiCE fragment library, feature tables and cell files that were used for the design.

CAD files shall be in a format that can be used directly by MicroStation without translation. The CAD files shall be organized using WSDOT standard levels, symbologies, colors, weights, saved views, reference files, and basemap/sheet file layout.

- F. State Furnished Services and Information: The state will provide access to computer aided engineering support personnel for information and answers to questions on WSDOT standard procedures for plan preparation and set-up and use of WSDOT custom resources for CAiCE and MicroStation.

The state will provide training on WSDOT specific procedures for CAiCE, MicroStation, and WSDOT surveying techniques for consultant personnel who are already experienced in the use of CAiCE, MicroStation, and surveying procedures. General training on how to use CAiCE & MicroStation software will be the responsibility of the consultant, however consultant personnel may sign up and participate in classes scheduled for DOT personnel on a space available basis. The dates and locations for all training will be scheduled by the state.

Additional Computer Aided Engineering information and resources are available at the following WSDOT Web Site:

<http://www.wsdot.wa.gov/eesc/cae>

Information available includes:

- WSDOT Survey, CAiCE and MicroStation standards developed in accordance with the WSDOT design manuals such as the Design Manual (M22-01), Survey Manual (M22-97), Plans Prep Manual (M22-31), etc. and current practice of the operational software
- All standard WSDOT CAiCE and MicroStation electronic resources such as fragments, symbol libraries, feature tables, menus, font libraries, seed files, etc.

Questions about this material or requests for other information should be directed to the WSDOT CAE Support Team. E-mail addresses and telephone numbers are posted on the website.

Other WSDOT web sites of interest:

<http://www.wsdot.wa.gov> - WSDOT Home Page

<http://www.wsdot.wa.gov/fossc/cons/> - Standard Specifications

<http://www.wsdot.wa.gov/eesc/CAE/pse/> - Wage Rates, GSPs, Standard Item Table

[http://www.wsdot.wa.gov/eesc/CAE/std\\_plan/](http://www.wsdot.wa.gov/eesc/CAE/std_plan/) - Standard Plans

<http://www.wsdot.wa.gov/fasc/EngineeringPublications/> - Engineering Publications

## **II. Photogrammetric Mapping Services**

- A. Photogrammetry Deliverables: The consultant shall provide photogrammetric mapping services and any related services deemed necessary to include, project design, aerotriangulation, and compilation using current generation analytical and / or softcopy systems to produce and deliver 3D Computer Aided Drafting and Design (CADD) files; Digital Ortho Photos; and hardcopy plots. In all cases, data will be compiled to WSDOT specifications for accuracy, completeness, and file management. Delivery will be in the format



consistent with that currently in use by WSDOT. A current listing and description of WSDOT procedures, methodology, software, equipment, and systems will be made available by contacting WSDOT Photogrammetry Section at (360) 709-5540.

All map files shall be delivered to WSDOT in unedited, unprocessed form, directly from the stereoplotter system where the data was compiled from the stereomodel. WSDOT regards these files not as a finished cartographic product, but rather as raw data to be used in the preparation of alignments, design templates, and contract plans. Therefore, it is desirable to have the data exactly as interpreted and measured by the photogrammetrist without subsequent adjustment for aesthetic purposes. No attempt should be made to compile data where the ground is not clearly visible.

The consultant shall also provide to WSDOT the negatives for all original aerial photography used to produce the photogrammetry data.

- B. Right to Review Photogrammetric Product by the WSDOT: The state reserves the right to schedule visits at the consultant's location to review procedures, systems, methodology, software, and qualifications for assurance of meeting WSDOT standards. The review(s) will include monitoring electronic file format and organization. The state reserves the right to review deliverables for compliance, completeness, and level of quality.

### **III. Bridge Design Section**

(Possible future section)

### **IV. Methods to Electronically Exchange Data**

- A. WSDOT Level Playing Field Software Suite: The Department of Transportation has adopted a standard suite of software products and minimum level for computer hardware. This suite of products and hardware is referred to as the level playing field (LPF). Word processing, spreadsheet, database, and other documents shall be delivered to WSDOT in a format that can be viewed directly by WSDOT's current versions of LPF software without conversion. Contact the WSDOT MIS Help Desk at (360) 705-7050 for information on the current versions of LPF software.
- B. Electronic Messaging: WSDOT currently uses Microsoft Outlook as an electronic mail standard.
- Where appropriate consultants can use "Internet" or "smtp" mail to send routine written correspondence.
  - Sending and receiving attached documents to e-mail message should be done in "rich-text" format that conserves formatting of the original document.
  - WSDOT currently has imposed a 3 Mb file size limit on e-mail attachments.
- C. File Transfers using FTP: WSDOT has an FTP site (<http://ftp.wsdot.wa.gov>) for transferring files that exceed the 3 Mb limit for email attachments. Public files on the FTP server are not private and have a limited retention time. It can be customized for the specific parties involved or for purposes of the project to have longer file retention times and more security considerations. Contact the WSDOT MIS Help Desk at (360) 705-7050 for information on how to access and use the FTP site.

- D. Exchange of Removable Media: WSDOT physical exchange requirements vary from office to office. This contract should describe the specific types or the range of removable media to be exchanged physically with business partners so that both parties can read and write to that media.

## **Exhibit F**

### **Title VI Assurances**

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the STATE, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the STATE shall impose such AGREEMENT sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part
6. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with

respect to any sub-consultant or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the STATE enter into such litigation to protect the interests of the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

**Exhibit G-1(a)**  
**Certification of Consultant**

I hereby certify that I am the \_\_\_\_\_ and duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_ and that neither the above firm nor I has:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure the AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation and the Federal Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

---

Signature

Date

## **Exhibit G-1(b)**

### **Certification of Washington State Department of Transportation**

I hereby certify that I am the:

☐ Director, Consultant Service

☐ Other \_\_\_\_\_

of the Department of Transportation of the State of Washington, and the above consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation and the Federal Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

---

Signature

Date

## **Exhibit G-2**

### **Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions**

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
  - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Consultant (Firm Name)

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Signature (Authorized Official of Consultant)

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Date

### **Exhibit G-3**

#### **Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," In accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

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Consultant (Firm)

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Signature (Authorized Official of Consultant)

Date



## Exhibit G-4

### Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_.\*\*.

This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution \*\*\*: \_\_\_\_\_

- \* Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)
- \*\* Insert the day, month, and year, when price negotiations were concluded and price agreement was reached.
- \*\*\* Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.